TRADE AND INVESTMENT

Insurance and Reinsurance Measures

Agreement Between the
UNITED STATES OF AMERICA
and the EUROPEAN UNION

Signed at Washington September 22, 2017

with

Annex

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

EUROPEAN UNION

Trade and Investment: Insurance and Reinsurance Measures

Agreement signed at Washington
September 22, 2017;
Entered into force April 4, 2018.
With annex.

BILATERAL AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE EUROPEAN UNION
ON PRUDENTIAL MEASURES
REGARDING INSURANCE AND REINSURANCE

Preamble

The United States of America (United States or U.S.) and the European Union (EU), Parties to this Agreement,

Sharing the goal of protecting insurance and reinsurance policyholders and other consumers, while respecting each Party's system for insurance and reinsurance supervision and regulation;

Affirming that for the United States, prudential measures applicable in the European Union, together with the requirements and undertakings provided for in this Agreement, achieve a level of protection for policyholders and other consumers with respect to reinsurance cessions and group supervision consistent with the requirements of the Federal Insurance Office Act of 2010;

Acknowledging the growing need for co-operation between EU and U.S. supervisory authorities including the exchange of confidential information, given the increased globalisation of insurance and reinsurance markets;

Taking into account that practical arrangements concerning cross-border cooperation are essential for supervision of insurers and reinsurers both during times of stability and during times of crisis;

Taking into account information exchanged on each Party's regulatory frameworks and after careful consideration of these frameworks;

Noting the benefits of enhancing regulatory certainty in the application of insurance and reinsurance regulatory frameworks for insurers and reinsurers operating in the territory of each Party;

Acknowledging risk mitigation effects of reinsurance agreements in a cross-border context provided applicable prudential conditions are fulfilled and taking into account protection of policyholders and other consumers;

Acknowledging that group supervision of insurers and reinsurers enables supervisory authorities to form sound judgments of the financial position of these groups;

Acknowledging the need for a group capital requirement or assessment for insurers and reinsurers forming part of a group that operates in the territory of both Parties, and that a group capital requirement or assessment at the level of the worldwide parent undertaking can be based on the approach of the Home Party;

Affirming the importance of specifications for the group capital requirement or assessment for group supervision and of, where warranted, the application of corrective or preventive or otherwise responsive measures by a supervisory authority based on that requirement or assessment; and

Encouraging exchange of information between supervisory authorities in order to supervise insurers and reinsurers in the interest of policyholders and other consumers,

Hereby agree:

ARTICLE 1

Objectives

This Agreement addresses the following:

(a) the elimination, under specified conditions, of local presence requirements imposed by a Party or its supervisory authorities on an assuming reinsurer which has its head office or is domiciled in the other Party, as a condition for entering into any reinsurance agreement with a ceding insurer which has its head office or is domiciled in its territory or for allowing the ceding insurer to recognise credit for reinsurance or credit for risk mitigation effects of such reinsurance agreement;

(b) the elimination, under specified conditions, of collateral requirements imposed by a Party or its supervisory authorities on an assuming reinsurer which has its head office or is domiciled in the other Party, as a condition for entering into any reinsurance agreement with a ceding insurer which has its head office or is domiciled in its territory or for allowing the ceding insurer to recognise credit for reinsurance or credit for risk mitigation effects of such reinsurance agreement;

(c) the role of the Host and Home supervisory authorities with respect to prudential group supervision of an insurance or reinsurance group whose worldwide parent undertaking is in the Home Party, including, under specified conditions, (i) the elimination at the level of the worldwide parent undertaking of Host Party prudential insurance solvency and capital, governance, and reporting requirements, and (ii) establishing that the Home supervisory authority, and not the Host supervisory authority, will exercise worldwide prudential insurance group supervision, without prejudice to group supervision by the Host Party of the insurance or reinsurance group at the level of the parent undertaking in its territory; and

(d) the Parties' mutual support for the exchange of information between supervisory authorities of each Party, and recommended practices for such exchange.

ARTICLE 2

Definitions

For the purposes of this Agreement the following definitions shall apply:

(a) "Ceding insurer" means an insurer or reinsurer that is counterparty to an assuming reinsurer under a reinsurance agreement;

(b) "Collateral" means assets, such as cash and letters of credit, pledged by the reinsurer for the benefit of the ceding insurer or reinsurer to guarantee or secure the assuming reinsurer's liabilities to the ceding insurer arising from a reinsurance agreement;

(c) "Credit for reinsurance or credit for risk mitigation effects of reinsurance agreements" means the right of a ceding insurer under prudential regulatory framework to recognise amounts due from assuming reinsurers relating to paid and unpaid losses on ceded risks as assets or reductions from liabilities respectively;

(d) "Group" means two or more undertakings, at least one of which is an insurance or reinsurance undertaking, where one has control over one or more insurance or reinsurance undertakings or other non-regulated undertaking;

(e) "Group Supervision" means the application of regulatory and prudential oversight by a supervisory authority to an insurance or reinsurance group for purposes including protecting policyholders and other consumers, and promoting financial stability and global engagement;

(f) "Home Party" means the Party in whose territory the worldwide parent of the insurance or reinsurance group or undertaking has its head office or is domiciled;

(g) "Home supervisory authority" means a supervisory authority from the Home Party;

(h) "Host Party" means the Party in which the insurance or reinsurance group or undertaking has operations, but is not the territory in which the worldwide parent undertaking of the insurance or reinsurance group or undertaking has its head office or is domiciled;

(i) "Host supervisory authority" means a supervisory authority from the Host Party;

(j) "Insurer" means an undertaking which is authorised or licensed to take up or engage in the business of direct or primary insurance;

(k) "Parent" means a regulated or unregulated undertaking that directly or indirectly owns or controls another undertaking;

(l) "Personal Data" means any information relating to an identified or identifiable natural person;

(m) "Reinsurer" means an undertaking which is authorised or licensed to take up or engage in the business of reinsurance activities;

(n) "Reinsurance activities" means the activity consisting of accepting risks ceded by an insurer or by another reinsurer;

(o) "Reinsurance agreement" means a contract whereby an assuming reinsurer has accepted risk ceded by an insurer or reinsurer;

(p) "Supervisory authority" means any insurance and reinsurance supervisor in the European Union or in the United States;

(q) "Undertaking" means any entity engaged in economic activity;

(r) "U.S. State" means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands;

(s) "Worldwide" means all operations or activities of a group wherever they occur; and

(t) "Worldwide parent undertaking" means the ultimate parent undertaking of a group.

ARTICLE 3

Reinsurance

1. Subject to the conditions in paragraph 4, a Party shall not, and shall ensure that its supervisory authorities or any other competent authorities do not, as a condition to allow an assuming reinsurer which has its head office or is domiciled in the territory of the other Party (hereunder for the purpose of Article 3, a "Home Party Assuming Reinsurer") to enter into a reinsurance agreement with a ceding insurer which has its head office or is domiciled in its territory (hereunder for the purpose of Article 3, a "Host Party Ceding Insurer"):

(a) maintain or adopt any requirement to post collateral in connection with cessions from a Host Party Ceding Insurer to a Home Party Assuming Reinsurer and any related reporting requirement attributable to such removed collateral, or

(b) maintain or adopt any new requirement with substantially the same regulatory impact on the Home Party Assuming Reinsurer as collateral requirements removed under this Agreement or any reporting requirement attributable to such removed collateral,

which, in the case of either (a) or (b), results in less favourable treatment of Home Party Assuming Reinsurers than assuming reinsurers which have their head office or are domiciled in the territory of the same supervisory authority as a Host Party Ceding Insurer. This paragraph does not prohibit a Party in whose territory a ceding insurer has its head office or is domiciled (hereunder for the purpose of Article 3, a "Host Party") or its supervisory authorities from applying requirements as a condition to allow the Home Party Assuming Reinsurers to enter into a reinsurance agreement with a Host Party Ceding Insurer if the same requirements apply to reinsurance agreements between a ceding insurer and an assuming reinsurer which have their head office or are domiciled in the territory of the same supervisory authority.

2. Subject to the conditions in paragraph 4, a Host Party shall not, and shall ensure that its supervisory authorities or any other competent authorities do not, as a condition to allow a Host Party Ceding Insurer to take credit for reinsurance or for risk mitigation effects of reinsurance agreements concluded with a Home Party Assuming Reinsurer:

(a) maintain or adopt any requirement to post collateral in connection with cessions from a Host Party Ceding Insurer to a Home Party Assuming Reinsurer and any related reporting requirement attributable to such removed collateral, or

(b) maintain or adopt any new requirement with substantially the same regulatory impact on the Home Party Assuming Reinsurer as collateral requirements removed under this Agreement or any reporting requirement attributable to such removed collateral,

which, in the case of either (a) or (b), results in less favourable treatment of Home Party Assuming Reinsurers than assuming reinsurers which have their head office or are domiciled in the territory of the same supervisory authority as a Host Party Ceding Insurer. This paragraph does not prohibit a Host Party or its supervisory authorities from applying requirements as a condition to allow a Host Party Ceding Insurer to take credit for reinsurance or risk mitigation effects of reinsurance agreements concluded with a Home Party Assuming Reinsurer if the same requirements apply to reinsurance agreements between a ceding insurer and an assuming reinsurer which have their head office or are domiciled in the territory of the same supervisory authority.

3. Subject to the conditions in paragraph 4, a Host Party shall not, and shall ensure that its supervisory authorities or any other competent authorities, as applicable, do not, as a condition of entering into a reinsurance agreement with a Host Party Ceding Insurer or as a condition to allow the Host Party Ceding Insurer to recognise credit for such reinsurance or credit for risk mitigation effect of such reinsurance agreement:

(a) maintain or adopt any requirement for a Home Party Assuming Reinsurer to have a local presence, or

(b) maintain or adopt any new requirement with substantially the same regulatory impact on the Home Party Assuming Reinsurer as local presence,

which, in the case of either (a) or (b), results in less favourable treatment of a Home Party Assuming Reinsurer than assuming reinsurers which have their head office or are domiciled in the territory of the supervisory authority of the Host Party Ceding Insurer or which have their head office or are domiciled in the territory of the Host Party and are licensed or permitted to operate in the territory of the supervisory authority of the Host Party Ceding Insurer. For a U.S. State, "permitted to operate" shall mean, for purposes of this provision, admitted in that State.

4. Paragraphs 1 to 3 apply subject to the following conditions:

(a) the assuming reinsurer has and maintains on an ongoing basis,

(i) at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States, of own funds or capital and surplus, calculated according to the methodology of its home jurisdiction; or

(ii) if the assuming reinsurer is an association including incorporated and individual unincorporated underwriters:

(A) minimum capital and surplus equivalents (net of liabilities) or own funds, calculated according to the methodology applicable in its home jurisdiction, of at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States; and

(B) a central fund containing a balance of at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States;

(b) the assuming reinsurer has and maintains on an ongoing basis:

(i) a solvency ratio of 100 percent SCR under Solvency II or an RBC of 300 percent Authorized Control Level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled; or

(ii) if the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of 100 percent SCR under Solvency II or an RBC of 300 percent Authorized Control Level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled;

(c) the assuming reinsurer agrees to provide prompt written notice and explanation to the supervisory authority in the territory of the ceding insurer if:

(i) it falls below the minimum capital and surplus or own funds, as applicable, specified in subparagraph (a), or the solvency or capital ratio, as applicable, specified in subparagraph (b); or

(ii) any regulatory action is taken against it for serious noncompliance with applicable law;

(d) the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the jurisdiction of the courts of the territory in which the ceding insurer has its head office or is domiciled, in accordance with applicable requirements of that territory for providing such consent. Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;

(e) where applicable for "service of process" purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority may require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction;

(f) the assuming reinsurer consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;

(g) the assuming reinsurer agrees in each reinsurance agreement subject to this Agreement that it will provide collateral for 100 percent of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable;

(h) The assuming reinsurer or its legal predecessor or successor, where applicable, provides the following documentation to the Host supervisory authority, if requested by that supervisory authority:

(i) with respect to the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the territory of its head office, including the external audit report;

(ii) with respect to the two years preceding entry into the reinsurance agreement, solvency and financial condition report or actuarial opinion, if filed with the assuming reinsurer's supervisor;

(iii) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers of the jurisdiction of the ceding insurer; and

(iv) prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming reinsurer's assumed reinsurance by ceding company, ceded reinsurance by the assuming reinsurer, and reinsurance recoverable on paid and unpaid losses by the assuming reinsurer, to allow for the evaluation of the criteria set forth in subparagraph (i) of paragraph 4;

(i) the assuming reinsurer maintains a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) more than 15 percent of the reinsurance recoverables are overdue and in dispute as reported to the supervisor;

(ii) more than 15 percent of the reinsurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer 90,400 Euro, where the assuming reinsurer has its head office in the EU, or 100,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States; or

(iii) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds 45,200,000 Euro, where the assuming reinsurer has its head office in the EU, or 50,000,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States;

(j) the assuming reinsurer confirms that it is not presently participating in any solvent scheme of arrangement, which involves Host Party Ceding Insurers, and agrees to notify the ceding insurer and its supervisory authority and to provide 100 percent collateral to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement;

(k) if subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the resolution, receivership, or winding-up proceedings is pending, may obtain an order requiring that the assuming reinsurer post collateral for all outstanding ceded liabilities; and

(l) the assuming reinsurer's Home supervisory authority confirms to the Host Party supervisory authority on an annual basis that the assuming reinsurer complies with subparagraph (b).

5. Nothing in this Agreement precludes an assuming reinsurer from providing to supervisory authorities information on a voluntary basis.

6. Each Party shall ensure that, in its capacity as a Host Party, with respect to its supervisory authorities, where the Host supervisory authority determines that a Home Party Assuming Reinsurer no longer satisfies one of the conditions listed in paragraph 4, the Host supervisory authority only imposes any of the requirements addressed in paragraphs 1 to 3 if that Host supervisory authority follows the procedure set out in subparagraphs (a) to (c):

(a) prior to imposing any such requirements the Host supervisory authority communicates with the assuming reinsurer and, except for exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection, provides the assuming reinsurer with 30 days from the initial communication to submit a plan to remedy the defect and 90 days from the initial communication to remedy the defect, and informs the Home supervisory authority;

(b) only where, after the expiry of this period of 90 days or less under exceptional circumstances as set out in (a), the Host supervisory authority considers that no or insufficient action was taken by the assuming reinsurer, the Host supervisory authority may impose any of the requirements as set out in paragraphs 1 to 3; and

(c) the imposition of any of the requirements set out in paragraphs 1 to 3 is explained in writing and communicated to the assuming reinsurer concerned.

7. Subject to applicable law and the terms of this Agreement, nothing in this Article shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for collateral or other terms in that reinsurance agreement.

8. This Agreement shall apply only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. Nothing in this Agreement shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate such reinsurance agreement.

9. For greater clarity, in the event of termination of this Agreement, nothing in this Agreement prevents supervisory authorities, or other competent authorities, from requiring the local presence of Host Party assuming reinsurers, or requiring posting of collateral and related requirements, or compliance with other provisions of applicable law, with respect to any liabilities under reinsurance agreements described in this Agreement.

ARTICLE 4

Group supervision

For the purposes of Articles 9 and 10, the Parties set forth the following practices of group supervision:

(a) Without prejudice to subparagraphs (c) to (h) and participation in supervisory colleges, a Home Party insurance or reinsurance group is subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by its Home supervisory authorities, and is not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by any Host supervisory authority.

(b) Notwithstanding subparagraph (a), Host supervisory authorities may exercise supervision with regard to a Home Party insurance or reinsurance group as set out in subparagraphs (c) to (h). Host supervisory authorities may exercise group supervision, where appropriate, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its territory. Host supervisory authorities do not otherwise exercise worldwide group supervision with regard to a Home Party insurance or reinsurance group, without prejudice to group supervision of the insurance or reinsurance group at the level of the parent undertaking in the territory of the Host Party.

(c) Where a worldwide risk management system, as evidenced by the submission of a worldwide group Own Risk and Solvency Assessment (ORSA), is applied to a Home Party insurance or reinsurance group according to the applicable law, the Home supervisory authority that requires the ORSA provides a summary of the worldwide group ORSA:

(i) to the Host supervisory authorities, if they are members of the insurance or reinsurance group's supervisory college, without delay, and;

(ii) to the supervisory authorities of significant subsidiaries or branches of that group in the Host Party, at the request of those supervisory authorities.

Where no such worldwide group ORSA is applied to a Home Party insurance or reinsurance group, according to applicable law, the relevant U.S. State or EU Member State's supervisory authority provides equivalent documentation which is prepared consistent with applicable law of the Home supervisory authority as referred to in subparagraphs (i) and (ii) above.

(d) The summary of the worldwide group ORSA, or the equivalent documentation as set out in subparagraph (c), includes the following elements:

(i) a description of the insurance or reinsurance group's risk management framework;

(ii) an assessment of the insurance or reinsurance group's risk exposure; and

(iii) a group assessment of risk capital and a prospective solvency assessment.

(e) Notwithstanding subparagraph (a), if the summary of the worldwide group ORSA, or, where applicable, equivalent documentation as set out in subparagraph (c), exposes any serious threat to policyholder protection or financial stability in the territory of the Host supervisory authority, that Host supervisory authority may impose preventive, corrective, or otherwise responsive measures with respect to insurers or reinsurers in the Host Party.

Prior to imposing such measures, the Host supervisory authority consults the insurance or reinsurance group's relevant Home supervisory authority. The Parties encourage supervisory authorities to continue to address prudential insurance group supervision matters within supervisory colleges.

(f) Prudential insurance group supervision reporting requirements as set out in the applicable law in the territory of the Host Party do not apply at the level of the worldwide parent undertaking of the insurance or reinsurance group unless they directly relate to the risk of a serious impact on the ability of undertakings within the insurance or reinsurance group to pay claims in the territory of the Host Party.

(g) A Host supervisory authority retains the ability to request and obtain information from an insurer or reinsurer pursuing activities in its territory, whose worldwide parent undertaking has its head office in the territory of the Home Party, for purposes of prudential insurance group supervision, where such information is deemed necessary by the Host supervisory authority to protect against serious harm to policyholders or serious threat to financial stability or a serious impact on the ability of an insurer or reinsurer to pay its claims in the territory of the Host supervisory authority. The Host supervisory authority bases such information request on prudential supervisory criteria and, whenever possible, avoids burdensome and duplicative requests. The requesting supervisory authority informs the supervisory college of such a request.

Notwithstanding subparagraph (a), the failure of an insurer or reinsurer to comply with such an information request may result in preventive, corrective or otherwise responsive measures being imposed within the Host supervisory authority's territory.

(h) With regard to a Home Party insurance or reinsurance group with operations in the Host Party and that is subject to a group capital assessment in the Home Party which fulfils the following conditions:

(i) the group capital assessment includes a worldwide group capital calculation capturing risk at the level of the entire group, including the worldwide parent undertaking of the insurance or reinsurance group, which may affect the insurance or reinsurance operations and activities occurring in the territory of the other Party; and

(ii) the supervisory authority in the territory of the Party where the group capital assessment as set out in subparagraph (i) above is applied has the authority to impose preventive, corrective, or otherwise responsive measures on the basis of the assessment, including requiring, where appropriate, capital measures;

the Host supervisory authority does not impose a group capital assessment or requirement at the level of the worldwide parent undertaking of the insurance or reinsurance group according to the applicable law in its territory.

Where a Home Party insurer or reinsurer is subject to a group capital requirement in the territory of the Home Party, the Host supervisory authority does not impose a group capital requirement or assessment at the level of the worldwide parent undertaking of the insurance or reinsurance group.

(i) Notwithstanding any provision in this Agreement, this Agreement does not and is not intended to limit or restrict the ability of EU supervisory authorities to exercise supervisory or regulatory authority over entities or groups that own or control credit institutions in the EU, have banking operations in the EU, or whose material financial distress or the nature, scope, size, scale, concentration, interconnectedness or mix of activities have been determined could pose a threat to the financial stability of the EU, including through exercise of: Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV), Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR), Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending

Regulation (EU) No 1093/2010 and Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, or other related laws and regulations.

Notwithstanding any provision in this Agreement, this Agreement does not and is not intended to limit or restrict the ability of the applicable U.S. supervisory authority to exercise supervisory or regulatory authority over entities or groups that own or control depository institutions in the United States, have banking operations in the United States, or whose material financial distress or the nature, scope, size, scale, concentration, interconnectedness, or mix of activities have been determined could pose a threat to the financial stability of the United States, including through exercise of authority pursuant to the Bank Holding Company Act (12 U.S.C. § 1841 et seq.), the Home Owners' Loan Act (12 U.S.C. § 1461 et seq.), the International Banking Act (12 U.S.C. § 3101 et seq.), the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5301 et seq.), or other related laws or regulations.

ARTICLE 5

Exchange of Information

1. The Parties shall encourage supervisory authorities in their respective jurisdictions to cooperate in exchanging information pursuant to the practices set forth in the Annex. The Parties understand that the use of such practices will enhance cooperation and information sharing, while respecting a high standard of confidentiality protection.

2. Nothing in this Agreement addresses requirements that may apply to the exchange of personal data by supervisory authorities.

ARTICLE 6

Annex

The Annex to this Agreement shall form an integral part of this Agreement.

ARTICLE 7

Joint Committee

1. The Parties hereby establish a Joint Committee, composed of representatives of the United States and representatives of the European Union, which shall provide the Parties with a forum for consultation and to exchange information on the administration of the Agreement and its proper implementation.

2. The Parties shall consult within the Joint Committee regarding this Agreement:

(a) upon mutual agreement of the Parties if either Party proposes consultation;

(b) at least once within 180 days after the date of entry into force or provisional application of this Agreement, whichever is earlier, and once per year thereafter, unless the Parties otherwise decide;

(c) if a written request for mandatory consultation is made by either Party; and

(d) if either Party provides written notice of intent to terminate.

3. The Joint Committee may address:

(a) matters related to the implementation of the Agreement;

(b) the effects of the Agreement, in the Parties' jurisdictions, on insurance and reinsurance consumers, and the commercial operations of insurers and reinsurers;

(c) any amendments to this Agreement proposed by either Party;

(d) any matter that requires mandatory consultation;

(e) a notice of intent to terminate this Agreement; and

(f) other matters as may be decided by the Parties.

4. The Joint Committee may adopt rules of procedure.

5. The Joint Committee shall be chaired in turn on an annual basis by each of the Parties, unless decided otherwise. The Joint Committee may be convened by its Chair at such time and manner as may be decided by the Parties.

6. The Joint Committee may convene any working group to facilitate its work.

ARTICLE 8

Entry into force

This Agreement shall enter into force seven days after the date the Parties exchange written notifications certifying that they have completed their respective internal requirements and procedures, or on such other date as the Parties may agree.

ARTICLE 9

Implementation of the Agreement

1. From the date of entry into force or provisional application of this Agreement, whichever is earlier, the Parties shall encourage relevant authorities to refrain from taking any measures which are inconsistent with any of the conditions or obligations of the Agreement, including with respect to the elimination of collateral and local presence requirements pursuant to Article 3. This may include, as appropriate, exchanges of letters between relevant authorities on matters pertaining to this Agreement.

2. From the date of entry into force or provisional application of this Agreement, whichever is earlier, the Parties shall take all measures, as appropriate, to implement and apply this Agreement as soon as possible in accordance with Article 10.

3. From the date of entry into force or provisional application of this Agreement, whichever is earlier, the United States shall encourage each U.S. State to promptly adopt the following measures:

(a) the reduction, in each year following the date of entry into force or provisional application of this Agreement, of the amount of collateral required by each State to allow full credit for reinsurance by 20 percent of the collateral that the U.S. State required as of the January 1 before signature of this Agreement; and

(b) the implementation of relevant U.S. State credit for reinsurance laws and regulations consistent with Article 3, as the method for adopting measures in conformity with paragraphs 1 and 2 of that Article.

4. Provided that this Agreement has entered into force, on a date no later than the first day of the month, 42 months after the date of signature of this Agreement, the United States shall begin evaluating a potential preemption determination under its laws and regulations with respect to any U.S. State insurance measure that the United States determines is inconsistent with this Agreement and results in less favourable treatment of an EU insurer or reinsurer than a U.S. insurer or reinsurer domiciled, licensed, or otherwise admitted in that U.S. State. Provided that this Agreement has entered into force, on a date no later than the first day of the month 60 months after the date of signature of this Agreement, the United States shall complete any necessary preemption determination under its laws and regulations with respect to any U.S. State insurance measure subject to such evaluation. For the purposes of this paragraph, the United States shall prioritise those States with the highest volume of gross ceded reinsurance for purposes of potential preemption determinations.

ARTICLE 10

Application of the Agreement

1. Except as otherwise specified, this Agreement shall apply on the date of the entry into force, or 60 months from the date of signature of this Agreement, whichever is later.

2. Notwithstanding Article 8 and paragraph 1 of this Article:

(a) the European Union shall provisionally apply Article 4 of this Agreement until the date of entry into force of this Agreement and then apply Article 4 thereafter by ensuring that supervisory authorities and other competent authorities follow the practices set forth therein from the seventh day of the month following the date on which the Parties have notified each other that their internal requirements and procedures necessary for the provisional application of this Agreement have been completed.

The United States shall provisionally apply Article 4 of this Agreement until the date of entry into force of this Agreement and then apply Article 4 thereafter by using best efforts and encouraging supervisory authorities and other competent authorities to follow the practices set forth therein from the seventh day of the month following the date on which the Parties have notified each other that their internal requirements and procedures necessary for the provisional application of this Agreement have been completed;

(b) On the date of entry into force of this Agreement, or 60 months after signature of this Agreement, whichever is later:

(i) the obligations of a Party set forth in Article 3, paragraphs 1 and 2 and Article 9 shall be applicable only if, and thereafter for as long as, the supervisory authorities of the other Party exercise supervision as set forth in Article 4 and satisfy the obligations set forth in Article 3, paragraph 3;

(ii) the practices of a Party set forth in Article 4 and the obligations set forth in Article 3, paragraph 3 shall be applicable only if, and thereafter for as long as, the supervisory authorities of the other Party satisfy the obligations set forth in Article 3, paragraphs 1 and 2; and

(iii) the obligations of a Party set forth in Article 3, paragraph 3 shall be applicable only if, and thereafter for as long as, the supervisory authorities of the other Party exercise supervision as set forth in Article 4 and satisfy the obligations set forth as in Article 3, paragraphs 1 and 2;

(c) where under Article 4, subparagraph (i), measures are applied by the applicable U.S. supervisory authorities outside the territory of the United States to an EU insurance or reinsurance group, the distress or activities of which the Financial Stability Oversight Council has determined could pose a threat to the financial stability of the United States, through application of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 5301 et seq.), either Party may terminate this Agreement under an accelerated mandatory consultation and termination. Where, under Article 4, subparagraph (i), measures are applied by an EU supervisory authority outside the territory of the European Union to a U.S. insurance or reinsurance group, in relation to a threat to the financial stability of the EU, either Party may terminate this Agreement under an accelerated mandatory consultation and termination;

(d) until the date set forth in subparagraph (b), and without prejudice to the mechanisms set forth therein, the reinsurance provisions of Article 3, paragraphs 1 and 2 shall apply with respect to an EU reinsurer in a U.S. State on the earlier of:

(i) adoption by such U.S. State of a measure consistent with Article 3, paragraphs 1 and 2; or

(ii) the effective date of any determination by the United States under its laws and regulations that such U.S. State insurance measure is preempted because it is inconsistent with this Agreement and results in less favourable treatment of an EU insurer or reinsurer than a U.S. insurer or reinsurer domiciled, licensed, or otherwise admitted in that U.S. State;

(e) from the date of provisional application as set out in subparagraph (a) and for 60 months thereafter, in the application of Article 4, subparagraph (h), supervisory authorities in the European Union shall not impose a group capital requirement at the level of the worldwide parent undertaking of the insurance or reinsurance group, with regard to a U.S. insurance or reinsurance group with operations in the European Union;

(f) from the date of signature of this Agreement, during the 60 month period referred to in subparagraph (b), if a Party does not meet the obligations of Article 3, with respect to local presence requirements, the supervisory authorities of the other Party may, after mandatory consultation, impose a group capital assessment or group capital requirement at the level of the worldwide parent undertaking on an insurance or reinsurance group which has its head office or is domiciled in the other Party;

(g) Article 3, paragraph 3 shall be implemented and applicable in the territory of the EU no later than 24 months from the date of signature of this Agreement, provided that the Agreement has been provisionally applied or has entered into force;

(h) subject to subparagraphs (b) and (d), Article 3, paragraphs 1 and 2 shall be implemented and fully applicable in all of the territory of both Parties no later than 60 months from the date of signature of this Agreement by both Parties, provided that the Agreement has entered into force; and

(i) as from the date of entry into force or provisional application of this Agreement, whichever is earlier, both Parties shall apply Articles 7, 11 and 12.

3. Where a Party does not adhere to paragraph 2 by the dates stipulated therein, the other Party may seek mandatory consultation through the Joint Committee.

ARTICLE 11

Termination and Mandatory Consultation

1. Following mandatory consultation, either Party may terminate this Agreement at any time by giving written notification to the other Party, subject to the procedures of this Article. Unless otherwise agreed by the Parties in writing, such termination shall be effective in 180 days, or 90 days with respect to termination described in Article 10, subparagraph 2(c), after the date of such notification. In particular, the Parties may terminate this Agreement where either Party has failed to fulfil its obligations under this Agreement or has taken measures inconsistent with the objectives of this Agreement.

2. Prior to notifying a decision to terminate this Agreement, including with respect to the provisions of Article 10, a Party shall notify the Chair of the Joint Committee.

3. The Parties shall take the necessary steps to communicate to interested parties the effect of termination on insurers and reinsurers in their respective jurisdictions.

4. Mandatory consultation through the Joint Committee shall be required if requested by either Party to the Chair of the Joint Committee, and shall commence not later 30 days, or 7 days if requested as described in Article 10, subparagraph 2(c), after such request unless the Parties agree otherwise. The Party requesting mandatory consultation shall provide written notice of the bases for the mandatory consultation. The mandatory consultation may be hosted at a site determined by the Parties, and if the Parties cannot agree on a location, then the Party requesting mandatory consultation shall propose three neutral sites outside of the territory of either Party, and the other Party shall select one of the proposed three neutral sites.

5. Mandatory consultation will be required prior to the termination of this Agreement, including with respect to the provisions of Article 10.

6. If a Party refuses to participate in a mandatory consultation as provided in this Article, then the Party seeking to terminate may proceed to terminate the Agreement as provided in paragraph 1 of this Article.

ARTICLE 12

Amendment

1. The Parties may agree, in writing, to amend this Agreement.

2. If a Party wishes to amend this Agreement, it shall notify the other Party in writing of a request to begin negotiations to amend the Agreement.

3. A request to begin negotiations to amend the Agreement shall be notified to the Joint Committee.

Done at Washington on the twenty second day of September in the year two thousand and seventeen.

For the United States of America

Secretary Steven T. Mnuchin
U.S. Department of the Treasury

Ambassador Robert E. Lighthizer
United States Trade Representative

For the European Union

Ambassador Lauri Lepik
Embassy of Estonia to the United States

Ambassador David O'Sullivan
Delegation of the European Union to the United States

ANNEX

Model Memorandum of Understanding Provisions on Exchange of Information between Supervisory Authorities

ARTICLE 1

Objective

1. The Supervisory Authority of (U.S. State) and the national Supervisory Authority of (EU Member State), the Authorities signing this Memorandum of Understanding, recognise the need for co-operation in exchange of information.

2. The Authorities recognise that practical arrangements concerning cross-border cooperation and information exchange are essential for both crisis situations and day-to-day supervision.

3. The purpose of this Memorandum of Understanding is to facilitate cooperation in the exchange of information between the Authorities to the extent permitted by Applicable Law and consistent with supervisory and regulatory purposes.

4. The Authorities recognise that nothing in this Memorandum of Understanding addresses requirements that may apply to the exchange of personal data by supervisory authorities.

5. Applicable Law on exchange and protection of Confidential Information is in place in the territory of the Authorities, with the aim of protecting the confidential nature of data exchanged between Authorities under this Memorandum of Understanding. Amongst other things, this Applicable Law seeks to ensure that:

(a) The exchange of Confidential Information is only for purposes directly related to the fulfilment of the supervisory functions of the Authorities; and

(b) All persons gaining access to such Confidential Information in the course of their duties will maintain the confidentiality of such information, except in certain defined circumstances as set forth in Article 7.

ARTICLE 2

Definitions

For the purpose of this Memorandum of Understanding, the following definitions should apply:

(a) "Applicable Law" means any law, regulation, administrative provision or other legal practice applicable in the jurisdiction of an Authority relevant to insurance and reinsurance supervision, the exchange of supervisory information, the protection of confidentiality and the handling and disclosure of information;

(b) "Confidential Information" means any Provided Information regarded as confidential by the jurisdiction of the Requested Authority;

(c) "Insurer" means an undertaking which is authorised or licensed to take up or engage in the business of direct or primary insurance;

(d) "Person" means a natural person, legal entity, partnership, or unincorporated association;

(e) "Personal Data" means any information relating to an identified or identifiable natural person;

(f) "Provided Information" means any information provided by a Requested Authority to a Requesting Authority in response to a request for information;

(g) "Regulated Entity" means an insurer or reinsurer authorised or supervised by a Supervisory Authority of the European Union or the United States;

(h) "Reinsurer" means an undertaking which is authorised or licensed to take up or engage in the business of reinsurance activities;

(i) "Requested Authority" means the Authority to whom a request for information is made;

(j) "Requesting Authority" means the Authority making a request for information;

(k) "Supervisory Authority" means any insurance and reinsurance supervisor in the European Union or in the United States; and

(l) "Undertaking" means any entity engaged in economic activity.

ARTICLE 3

Cooperation

1. Subject to Applicable Law, the Requested Authority should consider requests from the Requesting Authority seriously and should respond in a timely fashion. It should provide the Requesting Authority with the fullest possible response to a request for information consistent with its regulatory functions.

2. Subject to Applicable Law, the existence and content of any request for information should be treated as confidential by both the Requested and the Requesting Authorities, unless both Authorities mutually decide otherwise.

ARTICLE 4

Use of Provided Information

1. The Requesting Authority should only make requests for information if it has a legitimate regulatory or supervisory purpose for the request directly relevant to a Requesting Authority's lawful supervision of a Regulated Entity. It is generally not considered a legitimate regulatory or supervisory purpose for a Requesting Authority to seek information on individuals, unless the request is directly relevant to the fulfilment of supervisory functions.

2. The Requesting Authority should use Provided Information only for lawful purposes related to the Authority's regulatory, supervisory, financial stability, or prudential functions.

3. Subject to Applicable Law, any Provided Information exchanged belongs to, and will remain the property of, the Requested Authority.

ARTICLE 5

Request for Information

1. Requests for information by the Requesting Authority should be in writing, or in accordance with paragraph 2 where it is urgent, and include the following elements:

   (a) the Authorities involved, the field of supervision concerned and the purpose for which the information is sought;

   (b) the name of the person or Regulated Entity concerned;

   (c) details of the request which may include a description of the facts underlying the request, specific questions under investigation, and an indication of any sensitivity about the request;

   (d) the information requested;

   (e) the date by which the information is requested and any relevant legal deadlines; and

   (f) if relevant, whether, how, and to whom any of the information may be passed consistent with Article 7.

2. For urgent requests, a request can be presented orally, and should be followed by written confirmation without undue delay.

3. The Requested Authority should handle the request as follows:

   (a) The Requested Authority should confirm receipt of the request.

   (b) The Requested Authority should assess each request on a case-by-case basis to determine the fullest extent of information that can be provided under the terms of this Memorandum of Understanding and the procedures applicable in the jurisdiction of the Requested Authority. In deciding whether and to what extent to fulfil a request, the Requested Authority may take into account:

      (i) whether the request conforms with the Memorandum of Understanding;

      (ii) whether compliance with the request would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;

      (iii) whether it would be otherwise contrary to the essential interest of the Requested Authority's jurisdiction to provide the information requested;

      (iv) any other matters specified by the Applicable Law of the Requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and

      (v) whether complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.

(c) Where a Requested Authority denies or is unable to provide all or part of the requested Information, the Requested Authority should, to the extent practical and appropriate subject to Applicable Law, explain its reasons for not providing the information and consider possible alternative ways to meet the supervisory objective of the Requesting Authority. A request for Information may, in particular, be denied by the Requested Authority where the request would require the Requested Authority to act in a manner that would violate its Applicable Law.

ARTICLE 6

Treatment of Confidential Information

1. As a general rule, any information received under this Memorandum of Understanding should be treated as Confidential Information except where otherwise indicated.

2. The Requesting Authority should take all lawful and reasonably practicable actions to preserve the confidentiality of Confidential Information.

3. Subject to Article 7 and Applicable Law, the Requesting Authority should restrict access to Confidential Information received from a Requested Authority to persons working for the Requesting Authority or acting on its behalf who:

   (a) are subject to the Requesting Authority's obligations in its jurisdiction to prevent unauthorized disclosure of Confidential Information;

   (b) are under the supervision and control of the Requesting Authority;

(c) have a need for such information that is consistent with, and directly related to, a lawful regulatory or supervisory purpose; and

(d) are subject to ongoing confidentiality requirements after leaving the Requesting Authority.

ARTICLE 7

Onward Sharing of Provided Information

1. Except as provided in Article 7(2), a Requesting Authority should not transmit to a third party Provided Information received from the Requested Party, unless:

(a) the Requesting Authority has obtained prior written consent from the Requested Authority for onward sharing of such information unless the request is urgent, in which case it can be presented orally followed by written confirmation without delay; and

(b) the third party commits to abide by restrictions which maintain a substantially similar level of confidentiality as the one to which the Requesting Authority is subject to as set forth in this Memorandum of Understanding.

2. Subject to Applicable Law, if the Requesting Authority is subject to a legally compelled demand for or under a legal obligation to disclose Provided Information, the Requesting Authority should provide the Requested Authority with as much notice as reasonably practical of such demand and any related proceedings to facilitate opportunities to intervene and assert privilege. If the Requested Authority's consent to the production of Provided Information is not given, the Requesting Authority should take all reasonable steps where appropriate to resist disclosure, including by employing legal means to resist such disclosure and to assert and protect the confidentiality of any Confidential Information subject to potential disclosure.